In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-532

CHARLES KEEVER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Following a non-jury trial in the United States District Court for the Western District of Oklahoma, petitioner was convicted under 18 U.S.C. 1001 of making a false statement regarding the nature and number of criminal offenses of which he had been convicted, when he applied for employment with the United States Public Health Service. He was sentenced to imprisonment for a term of four years and six months, with all but six months suspended. The court of appeals affirmed *per curiam* (Pet. App. 4).

Petitioner's argument in this Court is only that the government failed to establish at trial that the false

statement was material to his employment eligibility.[1] The judge before whom the case was tried, however, found otherwise (Pet. App. 4-5), and the record supports that finding. Petitioner does not dispute that his application, if it had contained the omitted information concerning his three prior convictions would, at the very least, have been held in abeyance pending a clearance by the area "security representative" of the Public Health Service (Pet. 7); and, as the testimony revealed, this would most likely have also required a security investigation by "the Civil Service Commission in Chicago" (Pet. 4, 6). Whatever might have been the outcome of such investigations, the fact that they would have been required had the additional information been revealed plainly shows, as the court below held (Pet. App. 5-6), that petitioner's "[f]ailure to disclose misdemeanor convictions of the type here presented * * * goes to a material fact." The issue was thus properly decided by the courts below and does not warrant the attention of this Court.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

NOVEMBER 1972.

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[1] Petitioner has apparently abandoned the additional argument he advanced unsuccessfully below that the falsification was not knowing and willful.

☆ U.S. Government Printing Office: 1972—499-424/221

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In the Supreme Court

of the United States

OCTOBER TERM, 1972

No. 72-583

JOHN M. LUTTRELL,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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